THE HONOURABLE SRI JUSTICE C.V. RAMULU

WRIT PETITION NO.19906 OF 2005

DATED: 30-08-2007

Between:

The Chairman, Visakhapatnam Port Trust, Visakhapatnam and another.

.. Petitioners

and

Presiding Officer, Industrial Tribunal-cum-Labour Court, Visakhapatnam and another.

.. Respondents

THE HONOURABLE SRI JUSTICE C.V. RAMULU

WRIT PETITION NO.19906 OF 2005

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ORDER:

This writ petition is filed being aggrieved by an award, dated 10.01.2005, passed in I.D.No.157 of 2002, on the file of the 1st respondent- Central Government Industrial Tribunal-cum-Labour Court, Hyderabad.

Petitioners are the management and the 2nd respondent is the workman. It appears, the 2nd respondent-workman, claiming employment under Burma Repatriates' quota in Visakhapatnam Port Trust, was appointed as Khalasi in the said Port Trust. When it came to light that the certificate produced by him showing that he is a Burma repatriate was not a genuine one, his services were terminated on 21.04.1981. After twenty long years thereof, he raised a dispute under Section 2-A (2) of the Industrial Disputes Act, 1947 (for short 'the Act') before the 1st respondent – Industrial Tribunal challenging the termination and complained that his services were terminated without assigning any proper reason and the representations submitted by him to the management on several occasions went in vain.

A detailed counter was filed by the petitioners-management before the Industrial Tribunal stating that the 2nd respondent- workman was not appointed in the year 1976 and, in fact, he was sponsored by employment exchange and was appointed as Khalasi under Burma repatriates' quota on 18.07.1980 and his services were regularized subsequently. After appointment, in order to ascertain the genuineness of the Burma repatriate certificates submitted by 71 employees including the 2nd respondent-workman herein, all the

certificates were referred to the Special Officer (RR), Office of the Collectorate, Visakhapatnam, who, vide letter dated 08.04.1981, confirmed that out of those 71 certificates, 19 are forged one. The certificate submitted by the 2nd respondent was also found not genuine and, hence, his services were terminated on 21.04.1981. Further it is stated that in response to the representations submitted by the 2nd respondent on 20.05.1981, 05.10.1982 and 18.10.1982, letters were sent to him on 06.06.1981, 09.10.1982 and 12.11.1982 respectively. Apart from that, the present dispute, challenging the termination, was raised after a lapse of more than twenty years and, therefore, the same is liable to be dismissed.

Before the Industrial Tribunal-cum-Labour Court, the 2nd respondent-workman examined himself as WW-1 and no documents were marked on his behalf. On behalf of the petitioners-management, MW-1 was examined and Exs.M1 to M13 were marked.

After a detailed consideration of the entire evidence on record, the Tribunal held that the 2nd respondent-workman was sponsored by employment exchange as Burma repatriate and he was given job under the said quota and was removed in the year 1981 and immediately, on 03.08.1981, the same authority informed that he is one of the genuine candidates. It was further held that when the dismissal of the 2nd respondent – workman was found to be wrong, he should have been reinstated, but that was not done. He was corresponding till 1982 and then kept quiet. The Tribunal, while posing a question that what was the 2nd respondent doing for twenty long years, held that obviously he must have been gainfully employed somewhere else, but

no doubt, injustice has been done to him twenty years back, but he thought of that injustice when any other avocation or job or business whatever he was doing came to an end, and approached the Court by way of a chance litigation. The Tribunal, however, came to the conclusion that the dismissal was wrong and directed the management to appoint the 2nd respondent-workman as Khalasi, within thirty days from the publication of the award, on the minimum pay applicable at that time, subject to his being found medically fit and also giving age relaxation.

The learned counsel for the petitioners strenuously contended that firstly the Tribunal ought not to have entertained a stale dispute raised after twenty long years. May be, the workman again produced a certificate on 28.05.1981 showing that he was a genuine Burma repatriate, but that itself will not automatically entitle him to claim employment or to challenge the termination order passed by the petitioners on 21.04.1981, so long as his very appointment was on the basis of a non- genuine certificate. The Tribunal ought not to have entertained the dispute, which is nothing but a chance litigation. Further, granting relief in the fashion in which it was couched is unknown to the service law. Therefore, the award passed by the Labour Court is liable to be set aside.

Per contra, learned counsel for the 2nd respondent-workman stated that whether the certificate produced by the workman at the time of appointment was genuine or not, when subsequently another certificate was produced showing that he was a genuine Burma repatriate, the order of termination, dated 21.04.1981, automatically becomes illegal and, under such circumstances, the Tribunal has

rightly come to the conclusion that termination of the services of the workman was arbitrary and illegal and the workman is entitled for reinstatement into service.

I have given my earnest consideration to the respective submissions made by the learned counsel on either side. Perused the impugned award and other material made available on record.

At the outset, I am of the opinion that it is unfortunate that such a stale and chance litigation was entertained by the Industrial Tribunal. The services of the 2nd respondent –workman, who was working as Khalasi with the petitioners – management, were terminated on 21.04.1981 on the ground that the Burma repatriate certificate produced by him was not a genuine one. It may be appropriate to notice that in Ex.M13, a letter, dated 03.08.1981, addressed by the Collector, Visakhapatnam to the 2nd petitioner herein, it was stated that out of 19 candidates, whose certificates were found to be not genuine one, 7 candidates have applied for fresh certificates and they were found to be real Burma repatriates. But, the management came to a decision that there is no justification to reopen the case as the certificate initially submitted by the workman was confirmed as not genuine. Thus, his services were terminated in terms of the appointment order. Whenever an appointment is obtained by producing a fake or non-genuine certificate, the appointing authority is entitled to terminate the services of such person, after verification and without conducting any further enquiry into the matter. May be, the workman has produced another certificate on 28.05.1981 showing that he was a genuine Burma repatriate, but that itself will not cure the fraud committed by him initially by producing a fake certificate at the time of obtaining employment. Even assuming that the petitioners are

supposed to conduct some enquiry into the matter and then terminate the services of the 2nd respondent - workman, in a case of this nature, wherein the 2nd respondent-workman approached the Industrial Tribunal, after a lapse of twenty long years, firstly, the dispute raised by him could not have been entertained by the Industrial Tribunal and secondly such award could not have been passed. It is very interesting to notice the very findings recorded by the Industrial Tribunal at paragraph 8 of the award, which read as under:

> It may be noted that the petitioner was sponsored by employment exchange as Burma Repatriate and he was given the job under the said quota and he was removed in 1981 and immediately on 3.8.81 the same authority informed that he is one of the genuine candidates. His name was already sponsored by the employment exchange and he was already given a job when his dismissal was found to be wrong that he has submitted a bogus certificate. He should have been reinstated but he was not. He was corresponding till 1982 and then he kept quiet. But the question is, what was he doing for 20 long years. Obviously he must have been gainfully employed somewhere else and no doubt, injustice has been done to him 20 years back but he thought of that injustice when any other avocation or job or business whatever he was doing came to an end and approached this Court by way of a chance litigation. Hence, he is not entitled for any back wages or any such relief but however, as his dismissal was wrong he shall be appointed as Khalasi within 30 days from the publication of this award on the minimum pay now applicable subject to his being found medically fit and giving relaxation in his age considering his age as on the date of the first date of appointment,

failing which he will be entitled to monthly salary after 30 days of the publication of this award.

I am of the opinion that the dispute raised by the 2nd respondent was not only a stale one, but also speculative in its nature. Therefore, the award passed by the Labour Court is arbitrary, illegal and is liable to be set aside.

The writ petition is, accordingly, allowed setting aside the impugned award, dated 10.01.2005, passed in I.D.No.157 of 2002, on the file of the 1st respondent- Central Government Industrial Tribunal-cum-Labour Court, Hyderabad. No costs.

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C.V. RAMULU, J

30th August, 2007.

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